

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Advanced Energy United, Inc. <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	
)	No. 23-1341
Federal Energy Regulatory)	
Commission,)	
)	
<i>Respondent.</i>)	
)	

MOTION TO INTERVENE IN SUPPORT OF RESPONDENT FERC

Under Rules 15(d) and 27 of the Federal Rules of Appellate Procedure and Circuit Rules 15(b) and 27, SEEM Members (named below) hereby move to intervene in the above-captioned matter. SEEM Members expect to support Respondent FERC and oppose Petitioners in this appeal.

SEEM Members requesting intervention together are: Associated Electric Cooperative, Inc. (“AECI”), Dalton Utilities (“Dalton”), Dominion Energy South Carolina, Inc. (“DESC”), Duke Energy Progress, LLC (“Duke Energy Progress”), Duke Energy Carolinas, LLC (“Duke Energy Carolinas”), Duke Energy Florida, LLC (“Duke Energy Florida”), North Carolina Municipal Power Agency Number 1 (“NCMPA1”), Georgia System Operations Corporation (“GSOC”), Georgia Transmission Corporation (“GTC”), Louisville Gas and Electric Company (“LG&E”), Kentucky Utilities Company (“Kentucky Utilities”), Municipal Electric

Authority of Georgia (“MEAG Power”), North Carolina Electric Membership Corporation (“NCEMC”), Oglethorpe Power Corporation (“Oglethorpe”), PowerSouth Energy Cooperative (“PowerSouth”), South Carolina Public Service Authority (“Santee Cooper”), Alabama Power Company, Georgia Power Company, Mississippi Power Company, Tennessee Valley Authority (“TVA”), Tampa Electric Company (“TECO”), and JEA (all collectively, “SEEM Members”).

STATEMENT OF INTEREST

SEEM Members seek to intervene in this case because they have a direct and substantial interest that cannot be adequately represented by any other party.

The SEEM Members are load serving entities and transmission providers serving customers throughout the Southeastern United States. Each of the SEEM Members is a signatory to the Southeast Energy Exchange Market Agreement (“SEEM Agreement”). The Southeast EEM Agreement establishes a new electronic trading platform for matching intra-hour energy transactions and arranging transmission service to support the transactions, all within the territory of the Members.

The same Petitioners here brought an appeal against the Commission’s acceptance of the SEEM Agreement. *See Advanced Energy Economy v. FERC*, D.C. Cir. No. 22-1018. The SEEM Members at that time intervened in that appeal, filed a brief in support of the Commission, and presented oral argument on March

15, 2023. This Court ultimately vacated the Commission's rehearing order on its acceptance of the SEEM Agreement, and remanded for further consideration.

Advanced Energy United v. FERC, 82 F.4th 1095 (D.C. Cir. 2023).

Petitioners bring this appeal on the theory that the Commission's failure to act on remand promptly after this Court's mandate created a new appealable event. The SEEM Members do not (and could not) concede that this Court has jurisdiction over this matter, or that any appealable event has occurred since this Court's mandate. Even so, if an appeal proceeds, the SEEM Members have an interest in participating.

Petitioners' requested relief at the Commission and here is based on perceived flaws in the SEEM Agreement. Granting such relief would undermine the rights and obligations of the Members as set forth in the SEEM Agreement and as implemented in the tariff proceedings.

Thus, SEEM Members have a substantial and direct interest in the outcome of these proceedings that cannot be adequately represented by another party in the proceeding. *See Dimond v. District of Columbia*, 792 F.2d 179, 194 (D.C. Cir. 1986) (intervention is appropriate if "representation" by other parties "'may be' inadequate").

SEEM Members are seeking leave to intervene in this case to ensure that they are in a position to provide their unique perspective on the issues that may be

heard by this Court. Because this motion is timely under the rules of this Court, granting SEEM Members' motion will not inconvenience any other party in this proceeding.

CONCLUSION

SEEM Members respectfully request that the Court grant their Motion to Intervene in this case with full rights attendant thereto.

Dated: January 16, 2024

Respectfully submitted,

/s/ Matthew A. Fitzgerald

Matthew A. Fitzgerald
McGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219
T: (804) 775-4716
F: (804) 698-2251
mfitzgerald@mcguirewoods.com

Noel H. Symons
Katlyn A. Farrell
McGUIREWOODS LLP
888 16th Street NW, Suite 500
Washington, D.C. 20006
T: (202) 857-2929
F: (202) 828-2992
nsymons@mcguirewoods.com
kfarrell@mcguirewoods.com

*Counsel for Intervenors Associated
Electric Cooperative, Inc., Dalton
Utilities, Dominion Energy South
Carolina, Inc., Duke Energy Progress,*

LLC, Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, North Carolina Municipal Power Agency Number 1, Georgia System Operations Corporation, Georgia Transmission Corporation, Louisville Gas and Electric Company, Kentucky Utilities Company, Municipal Electric Authority of Georgia, North Carolina Electric Membership Corporation, Oglethorpe Power Corporation, PowerSouth Energy Cooperative, South Carolina Public Service Authority, Alabama Power Company, Georgia Power Company, Mississippi Power Company, Tennessee Valley Authority, Tampa Electric Company, and JEA

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CORPORATE DISCLOSURE STATEMENTS

Associated Electric Cooperative, Inc.

Associated Electric Cooperative, Inc. (“AECI”) is a rural electric cooperative that provides wholesale power and high-voltage transmission to its six regional generation and transmission cooperative member-owners. These six regional generation and transmission cooperatives, in turn, supply wholesale power to thirty-nine distribution cooperatives in Missouri, three distribution cooperatives in southeast Iowa, and nine distribution cooperatives in northeast Oklahoma, serving more than 910,000 members. In addition to providing power sales and transmission service to its member cooperatives, AECI also takes and provides transmission service through its tariff which enables transmission agreements with and makes off-system power sales and purchases to various counterparties in the SE region of the United States.

AECI has no parent company and no publicly held company has a 10% or greater ownership interest in AECI.

Dalton Utilities

Dalton Utilities is a government corporation: a full-service municipal utility, governed by the Board of the Water, Light and Sinking Fund Commissioners.

Established in 1913 by an Act of the Georgia General Assembly, the Commission is composed of five members (appointed by the Dalton Mayor and Council) and is empowered to determine utility rates, control expenditures, and make necessary improvements/expansions to the various utility systems. Dalton Utilities receives no tax monies and operates solely on customer revenues.

Dominion Energy South Carolina, Inc.

Dominion Energy South Carolina, Inc. (“DESC”) is a corporation organized in South Carolina that is engaged in the generation, transmission, and distribution of electricity to customers in South Carolina.

DESC is a direct, wholly-owned subsidiary of SCANA Corporation, which is in turn, a direct, wholly-owned subsidiary of Dominion Energy, Inc. Dominion Energy, Inc. is a publicly-traded corporation (stock ticker “D”).

Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, and Duke Energy Florida, LLC

Duke Energy Progress, LLC (“Duke Energy Progress”) and Duke Energy Carolinas, LLC (“Duke Energy Carolinas”) are North Carolina limited liability

companies that provide firm native load service and related electric services to customers in North Carolina and South Carolina. Duke Energy Florida, LLC (“Duke Energy Florida”) is a Florida limited liability company that provides firm native load service and related electric services to customers in Florida.

Duke Energy Progress, Duke Energy Carolinas, and Duke Energy Florida are each wholly-owned subsidiaries of Duke Energy Corporation (NYSE: DUK), which is a publicly-held company incorporated in Delaware. Duke Energy Corporation has no parent company and no publicly-held corporation owns 10 percent or greater ownership interest in Duke Energy Corporation.

Georgia System Operations Corporation

Georgia System Operations Corporation (“GSOC”) is a Georgia nonprofit corporation operating on a cooperative basis that provides system operations services to transmission, generation, and distribution electric cooperatives across the State of Georgia and a founding member of the Southeast Energy Exchange Market.

GSOC has no parent corporation. No publicly held corporation owns any portion of GSOC, and it is not a subsidiary or an affiliate of any public owned corporation.

Georgia Transmission Corporation (An Electric Membership Corporation)

Georgia Transmission Corporation (An Electric Membership Corporation)

(“GTC”) is a not-for-profit electric cooperative that provides electric transmission service primarily to its distribution electric cooperative members in Georgia and is a founding member of the Southeast Energy Exchange Market.

GTC has no parent corporation. No publicly-held corporation owns any portion of GTC, and it is not a subsidiary or an affiliate of any publicly-owned corporation.

Louisville Gas and Electric Company and Kentucky Utilities Company

Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“Kentucky Utilities”) are regulated utilities that serve approximately 1.3 million customers.

LG&E and Kentucky Utilities are wholly-owned subsidiaries of LG&E and KU Energy LLC (“LKE”), a holding company, which in turn is a wholly-owned indirect subsidiary of PPL Corporation. Other than PPL Corporation, no publicly-held company owns 10% or more of any LKE membership interest or LG&E’s and Kentucky Utilities’ shareholding interests. No publicly held company has a 10% or greater ownership interest in PPL Corporation. PPL Corporation is a publicly- traded corporation (stock ticker “PPL”). The Vanguard Group, Inc., an investment advisor, reports certain beneficial ownership, for certain purposes, with respect to 11.82% of PPL Corporation shares.

Municipal Electric Authority of Georgia

The Municipal Electric Authority of Georgia (MEAG Power) is a government corporation and instrumentality of the State of Georgia created by an act of the Georgia General Assembly in 1975 to provide affordable and reliable wholesale electric power to those eligible political subdivisions located in Georgia.

MEAG Power has no parent company or shareholders.

North Carolina Electric Membership Corporation

NCEMC is a not-for profit generation and transmission cooperative incorporated under North Carolina law that owns and/or purchases generation and transmission services on behalf of its 25 member distribution cooperatives.

NCEMC is wholly owned by its members and has no parent companies. No publicly held company has any ownership interest in NCEMC.

North Carolina Municipal Power Agency Number 1

North Carolina Municipal Power Agency Number 1 (“NCMPA1”) is a public body and body corporate and politic organized in accordance with the provision of Chapter 159B of the North Carolina General Statutes. NCMPA1 is a government corporation.

Oglethorpe Power Corporation (An Electric Membership Corporation)

Oglethorpe Power Corporation (An Electric Membership Corporation) (“Oglethorpe”) is a Georgia electric membership corporation that owns and/or

operates fourteen generating facilities located across the State of Georgia and a founding member of the Southeast Energy Exchange Market.

Oglethorpe has no parent corporation. No publicly held corporation own any portion of Oglethorpe, and it is not a subsidiary or an affiliate of any public owned corporation.

PowerSouth Energy Cooperative

PowerSouth Energy Cooperative is a Generation and Transmission electric cooperative that supplies and delivers wholesale power to 20 member systems, comprised of 16 distribution cooperatives and 4 municipal electric systems, in Alabama and northwest Florida.

PowerSouth has no parent company and no publicly held company has a 10% or greater ownership interest in PowerSouth.

South Carolina Public Service Authority

The South Carolina Public Service Authority (“Santee Cooper”) is a body corporate and politic created by an Act of the South Carolina General Assembly in 1934 “to manufacture, produce, generate, transmit, distribute, and sell water power, steam electric power, hydroelectric power, or mechanical power within and without the State of South Carolina.” S.C. Code § 58-31-30(A)(8).

Santee Cooper has no parent company or shareholders.

Alabama Power Company

Alabama Power Company (“Alabama Power”) is a corporation organized under the laws of the State of Alabama. Alabama Power is a regulated public utility engaged in the generation, transmission, distribution and purchase of electricity and the sale of electric service within a service area comprising most of the State of Alabama.

The Southern Company (trading symbol “SO”) owns all of Alabama Power’s outstanding common stock, which represents a substantial majority of the overall voting power of Alabama Power’s equity securities. Alabama Power also has preferred stock outstanding, all of which are publicly traded (trading symbol “ALP PR Q” for 5.00% Series Class A Preferred Stock).

Georgia Power Company

Georgia Power Company (“Georgia Power”) is a corporation organized under the laws of the State of Georgia. Georgia Power is a regulated public utility engaged in the generation, transmission, distribution and purchase of electricity and the sale of electric service within a service area comprising most of the State of Georgia.

Georgia Power is a wholly-owned, direct subsidiary of The Southern Company.

The Southern Company is a publicly-traded corporation (trading symbol

“SO”).

Mississippi Power Company

Mississippi Power Company (“Mississippi Power”) is a corporation organized under the laws of the State of Mississippi. Mississippi Power is engaged in the generation, transmission, distribution and purchase of electricity and the sale of electric service within 23 counties in southeastern Mississippi, at retail in 123 communities (including Biloxi, Gulfport, Hattiesburg, Laurel, Meridian and Pascagoula), as well as in rural areas, and at wholesale to one municipality, six rural electric distribution cooperative associations and one generating and transmitting cooperative.

Mississippi Power is a wholly-owned, direct subsidiary of The Southern Company. The Southern Company is a publicly-traded corporation (trading symbol “SO”).

Tennessee Valley Authority

The Tennessee Valley Authority (“TVA”) is a corporate agency and instrumentality of the United States government created and existing pursuant to the Tennessee Valley Authority Act of 1933, as amended, 16 U.S.C. §§ 831-831ee (2006 & Supp. III 2009).

TVA has no parent corporation. No publicly held company has any ownership interest in TVA.

Tampa Electric Company

Tampa Electric Company (“TECO”) is a public utility operating within the State of Florida. All of its common stock is owned by TECO Energy, Inc., a holding company. TECO Energy, Inc. is an indirect, wholly owned subsidiary of Emera Inc. Therefore, TECO is an indirect, wholly owned subsidiary of Emera Inc., which is a publicly-held, geographically diverse energy and services company headquartered in Nova Scotia, Canada.

JEA

JEA is a body politic and corporate, created and established by Chapter 67-1569, Laws of Florida (as amended) to own, operate, and manage the electric, water and wastewater utilities systems for the benefit of the City of Jacksonville (COJ), Florida. JEA is governed by a board of seven members appointed by the COJ Mayor and Council. JEA is empowered to establish, levy, regulate, impose, and collect rates, assessments, fees and charges for services to the extent required to operate and maintain self-sustaining utilities systems. JEA has no parent corporation and is not publicly traded.

Dated: January 16, 2024

Respectfully submitted,

/s/ Matthew A. Fitzgerald

Matthew A. Fitzgerald

Counsel for Intervenors

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P.

27(d)(2) because:

- The motion contains 575 words, excluding the parts exempted by Fed. R. App. P. 27(a)(2)(B).

This motion complies with the typeface and type-style requirements of Fed.

R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because:

- The motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Matthew A. Fitzgerald

Matthew A. Fitzgerald

Counsel for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, I filed the foregoing with the Clerk of the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I also certify that on the same day, I sent a copy of the foregoing through U.S. Mail, postage prepaid, to the following:

Mr. Robert H. Solomon
Solicitor
Federal Energy Regulatory
Commission
888 First Street, NE
Washington, DC 20426

Kimberly D. Bose
Secretary
Federal Energy Regulatory
Commission
888 First Street, NE
Washington, DC 20426

/s/ Matthew A. Fitzgerald

Matthew A. Fitzgerald

Counsel for Intervenors